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NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1991

JOHNNY MYNHIER BRADLEY
and KARL BRADLEY - PETITIONERS

vs.

JUANITA ROBINSON, FARRIS H. GILLESPIE,
and ASA R. LITTLE, JR. - RESPONDENTS

and

J.M. RICHARDSON, in his capacity
as Judge, Menifee Circuit Court - DEFENDANT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the United States of America must be made an Involuntary Plaintiff in order to protect both the pecuniary and proprietary interests of the United States of America -- as well as the interests of Petitioners -- in the lands claimed by Respondents under the *same* deeds which are the subject of the State Court Action and the Federal Condemnation Proceeding?

Whether the fundamental, time-honored principle set forth by this Most Honorable Court in *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 398 (1981), that "the res judicata consequences of a final judgment on the merits [are not] altered by the fact that the judgment *may* [emphasis added] have been wrong or rested on a legal principle subsequently overruled in another case," stands affirmed?

Whether the issue of ownership to a unitary tract of land in a Federal Condemnation Proceeding must *necessarily* have been decided in order for the United States of America to duly award damages in a partial-taking case?

Whether the only adequate remedy to restrain the continuance of harassing lawsuits whose purpose is to relitigate key under-lying issues in a legally incompetent state forum is the equitable remedy of a permanent federal injunction?

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NO. _____

IN THE SUPREME COURT

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JOHNNY MYNHIER BRADLEY
and KARL BRADLEY - Petitioners

vs.

JUANITA ROBINSON, FARRIS H. GILLESPIE,
and ASA R. LITTLE, JR. - Respondents

and

J.M. RICHARDSON, in his capacity
as Judge, Menifee Circuit Court - Defendant

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners, Johnny Mynhier Bradley and Karl Bradley, respectfully pray that a writ of certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit refusing to reverse the Judgment, Order and Opinion of the United States District Court for the Eastern District of Kentucky as a matter of law. Pursuant to the Anti-Injunction Act, 28 U.S.C. §2283, the District Court was clearly authorized and required to enjoin the State Court Action in aid of its continuing jurisdiction of the Federal Condemnation Proceeding and to protect or effectuate its Judgment.

In addition, the United States of America should be made an Involuntary Plaintiff in order to protect both the pecuniary and proprietary interests of the United States of America -- as well as the interests of Petitioners -- regarding United States Government lands claimed by Respondents in the State Court Action under the same deeds which these Respondents relied upon in the 1974 Federal Condemnation Proceeding in which these lands were duly purchased by the United States of America from Petitioners.

OPINIONS BELOW

The unpublished written opinion of the United States Court of Appeals for the Sixth Circuit appears in Appendix A to this Petition. The unpublished written opinion of the District Court for the Eastern District of Kentucky appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on March 27, 1992. A timely Petition for Rehearing Containing Suggestion For Rehearing En Banc was filed on April 8, 1992. The Court of Appeals' denial of the Petition for Rehearing was issued on May 8, 1992, and is set forth in Appendix I. This Court's jurisdiction is invoked under Title 28 U.S.C. §§ 1254(l) and 2101(c), (f).

STATUTORY PROVISIONS INVOLVED

Title 28 U.S.C. §§ 1254, 1331, 2101, 2283 and Title 40 U.S.C. §258a are set forth in Appendices K, L, M, N and O, respectively.

STATEMENT OF THE CASE

The United States District Court, Eastern District of Kentucky, Lexington Division, had jurisdiction pursuant to Title 28 U.S.C. §§ 1331 and 2283, and Rule 19(a) of the Federal Rules of Civil Procedure.

On June 28, 1974, the United States of America commenced the Federal Condemnation Proceeding to acquire a portion of the land conveyed to Mr. James W. Mynhier from the United States of America on May 4, 1944. In the Federal Condemnation Proceeding, the United States sought to condemn and take three tracts of land, two of which (3204E and 3322E) were contained within or were subsets within the Disputed Property and were based on the same source of title as the rest of the property.

Because of the existence of conflicting Deeds on the land included in Tracts 3204E and 3322E, the United States of America named in its Complaint as Defendants all persons who could possibly claim ownership to the tracts located within the Disputed Property.

The named Defendants included Johnny Maxine Bradley and her husband, Karl Bradley (Petitioners); Walter Clay Mynhier (deceased) and his wife, Margaret Mynhier; Farris H. Gillespie (Respondent) and his wife, Ruby Gillespie (deceased); Herman Robinson (deceased) and his wife, Juanita Robinson (Respondent), and others not germane to the matter before this Court. The Complaint filed by the United States of America also specifically identified Deeds related to the Disputed Property.

Immediately upon filing the Complaint in Condemnation, the United States of America filed its Declaration of Taking on June 28, 1974. This procedure is authorized pursuant to 40 U.S.C. §258a. In this case, the Judgment on the Declaration of Taking was entered on July 1, 1974, thereby authorizing title in the United States for the three tracts of land (3204, 3204E and 3322E).

On or about July 26, 1974, copies of the Notice of Condemnation and the Judgment on the Declaration of Taking were personally served upon the Gillespies (Respondent). The same Notice and Judgment were also personally served on the Robinsons (Respondent) on or about July 10, 1974. Even though all the Defendants in the Federal Condemnation Proceeding, including the Respondents, were served, only the Bradleys (Petitioners) and the Mynhiers entered any appearance in the Federal Condemnation Proceeding.

On or about September 25, 1975, a Motion was made to disburse to the Bradleys (Petitioners) and the Mynhiers the funds deposited by the United States for compensation for Tracts 3204 and 3204E when it filed the Declaration of Taking. On October 10, 1975, the Court ordered the disbursement of $17,550.00 to the Bradleys (Petitioners) and the Mynhiers for compensation for the taking of Tracts 3204 and 3204E. As previously noted, Tract 3204E was categorically located within the Disputed Property and based on the same source of title as the rest of the property.

On October 21, 1976, a Certificate of Publication and Mailing was filed which indicated that Notices of the Condemnation Proceeding had been published for at least three consecutive weeks in the *Clay City Times*, the weekly newspaper of general circulation in Menifee County, Kentucky, in which the Respondents resided. The publication specifically gave Notice that the United States sought to condemn or take Tract 3322E and that this tract was included in portions of the Disputed Property.

In November 1976, the Court in the Federal Condemnation Proceeding referred the matter to the United States Magistrate for a Report and Recommendation. On December 10, 1976, an Order was entered scheduling a pretrial conference before the Magistrate on

January 18, 1977. This Order indicates that it was distributed to Respondents.

On March 10, 1977, a hearing was held before the Land Commissioners on this issue of compensation due for the diminution (i.e. damages) sustained from the taking of Tracts 3204, 3204E and 3322E. Petitioners retained counsel and offered expert testimony on the damages they sustained to all of the property from the takings. As previously indicated, Respondents did not appear and offered no proof or evidence.

On April 1, 1977, Petitioners et al. filed a Motion for Judgment to be declared full owners of Tract 3322 E. The Motion noted that Respondents had failed to appear and waived any claim they had to real estate located on Tract 3322E.

The Report and Recommendation of the Land Commissioners was filed April 25, 1977. In the Report, the Land Commissioners examined and determined the value of all the Disputed Property before and after the taking of the two tracts located internally within the Disputed Property. The Land Commissioners further considered evidence of the substantial improvements made by the Petitioners to areas within the Disputed Property and adjacent but not within the two tracts (3204E and 3322E) including construction of a new residence. The Land Commissioners concluded that "before the taking the 57.05 acres had a fair reasonable market values of ... $79,214.00 ... and after the taking the 18.36 acres which remained had a value of $57,050.00, leaving a difference in before and after-taking values of $22,164.00."

On May 16, 1977, the Court signed an Order adopting the Report of the Land Commissioners. This Order (entered on May 17, 1977) also ordered Respondents to serve and file any response they had to Petitioners' et al. Motion for Judgment within 20 days. This Order indicates that it was served on May 18, 1977, by the Federal Court Clerk to the Respondents.

On May 16, 1977, Judgment was also entered that additional compensation was due for the taking of all three tracts. This Judgment was also served upon the Respondents.

No response was ever filed by the Respondents. Thus, on June 29, 1977, the United States moved to distribute the additional funds deposited in the registry of the Court as assessed by the May 16, 1977 Judgment. On June 30, 1977, the Court in the Federal Condemnation Proceeding ordered disbursement of the additional funds to the Petitioners et al. On July 11, 1977, the United States filed a Motion and Order indicating that "just compensation has been determined and paid for the taking of all interests in and to the property condemned in this Civil Action and that nothing further remains to be done."

On July 27, 1990, Respondents filed suit (Menifee Circuit Court Civil Action File No. 90-CI-9055) against Petitioners et al., including individuals possessing no present possessory or future interests in the Disputed Property. In addition, Respondents' suit was predicated on an inaccurate, fraudulently or grossly negligently drafted deed that purports to vest ownership in Respondents of lands taken in the prior Federal Condemnation Action by the United States of America to remaining land which comprised a portion of the unitary tract whose res the United States took control of in determining the award of damages in this partial-taking case. [74-54]

Petitioners et al. filed an Answer and Counterclaim dated August 14, 1990. Petitioners did not file a Motion for Summary Judgment predicated on their res judicata defense in the State Court, but filed a Complaint against Respondents on November 19, 1990, pursuant to 28 U.S.C. §§ 2283 and 1331, seeking *inter alia* an injunction against Respondents' State Court suit. Petitioners, therefore, meet the exception set forth by this Court in *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 106 S.Ct. 768, 772, 88 L.Ed. 877 (1986).

On December 18, 1990, Petitioners filed a Motion for Partial Summary Judgment with the District Court.

On March 27, 1991, Petitioners moved the District Court pursuant to Fed. R. Civ. Proc. 19(a) to add the United States of America as an involuntary plaintiff.

On April 11, 1991, the District Court issued its Opinion and Order denying Petitioners' Motion for Partial Summary Judgment, denying Petitioners' motion to add the United States as an involuntary plaintiff, and granting the Respondents' Motion for Summary Judgment (Appendix D).

A Notice of Appeal was filed on May 6, 1991 (Appendix F).

Petitioners argued before the U.S. Court of Appeals for the Sixth Circuit that (1) entry of an Injunction of the State Court Action is necessary to aid the jurisdiction of the Federal Court; (2) entry of an Injunction of the State Court Action is required in order for the District Court to protect or effectuate its judgment in the Federal Condemnation Proceeding; (3) the Anti-Injunction Act provides jurisdiction for Federal Courts to enforce and protect their prior judgments; (4) Fed. R. Civ. P. Rule 71A provides no relief to Respondents with respect to the Anti-Injunction Act; and (5) the District Court erred as a matter of law in failing to grant Petitioners' Motion to add the United States of America as an involuntary plaintiff.

The Sixth Circuit held that it "[agreed] with the district court that the 'in aid of jurisdiction' exception does not apply in this case."

Bradley v. Robinson, No. 91-5562 at 7. "The other exception to the Anti-Injunction Act offered by [Petitioners] is of greater merit, but also ultimately fails." *Id.* at 7. "[Petitioners'] res judicata claims are not necessarily without merit, yet 'the proper forum for a complete investigation of the res judicata effects of the district court's judgment is the state court' which remains fully competent and able to resolve the issue." *Bradley v. Robinson*, No. 91-5562 at 9 (quoting *Staffer v. Bouchard Transp. Co.*, 878 F.2d 638, 643 (2d Cir. 1989)).

On May 8, 1992, the United States Court of Appeals for the Sixth Circuit denied Petitioners' petition for rehearing en banc (Appendix I).

On May 28, 1992, the U.S. Court of Appeals for the Sixth Circuit granted Petitioners' motion to stay the mandate (Appendix J).

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for three reasons: This Petition presents an issue upon which the U.S. Court of Appeals for the Sixth Circuit "has so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's power of supervision;" the Court below "decided an important question of federal law which has not been settled by this Court;" and the Opinion below conflicts with previous decisions of this Court, as well as decisions of other Circuits, on these same issues. Unequivocal direction from the High Court is clearly warranted.

Rule 19(a) of the F.R.C.P. *mandates* that a person shall be joined as a party if complete relief cannot be granted in the person's absence, or if the person claims an interest relating to the subject of the matter. Rule 19(a) further notes that such a person may be made an involuntary plaintiff *if he should refuse* to join.

Since the United States of America does, in fact, have an interest relating to the subject matter of this action, the United States of America *must* be joined as an involuntary plaintiff in order to afford *complete* relief to all parties involved.

The District Court denied Petitioners' Motion to add the United States of America as an involuntary plaintiff. No rationale or legal authorities were offered. The Sixth Circuit ignored this issue in the Opinion below, and further refused to grant a rehearing on this issue, et al. This departure by the Sixth Circuit "from the accepted and usual course of judicial proceedings" has denied Petitioners any opportunity for complete relief to be afforded them in their efforts to defend their ancestral land for the second time from Respondents' baseless claims.

This Court has historically held that "the res judicata consequences of a final unappealed judgment on the merits [are not] altered

by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 398, 101 S.Ct. 2428, 69 L.Ed. ___ (1981).

The Respondents argued in their District Court Memorandum that *Federated Department Stores, Inc. v. Moitie* had been "*impliedly* [emphasis added] overruled" by this Honorable Court's holding in *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988). The District Court held that "[a]s the [Respondents] point out ... the Supreme Court held that 'an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court.'" *Id.* at 148. The Sixth Circuit held that "[i]n *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988), the Supreme Court set forth some standards for application of the relitigation exception." *Bradley v. Robinson*, 91-5562.

In *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 398 (1981) (quoting *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948); *Cromwell v. County of Sac*, 94 U.S. 351, 352-363 (1877)), the Honorable Court held that "[t]here is little to be added to the doctrine of res judicata as developed in the case law of this Court. A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were *or could have been* [emphasis added] raised in that action."

"There is simply 'no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of res judicata.'" *Id.* (quoting *Heiser v. Woodruff*, 327 U.S. 733, 736 (1946)). "*Nor are the res judicata consequences of a final unappealed judgment on the merits altered by the fact that the judgment on the merits may have been wrong or rested on a legal principle subsequently overruled in another case* [emphasis added]." *Baldwin v. Traveling Men's Assn.*, 283 U.S. 522 (1931); *Angel v. Bullington*, 330 U.S. 183, 187 (1947); *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 (1940); *Wilson's Executor v. Deen*, 121 U.S. 525, 534 (1887).

The Sixth Circuit implicitly accepted Respondents' argument that this Honorable Court in *Chick Kam Choo* has overruled the holding in *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 398 (1981). The Sixth Circuit's holding below completely obliterates this Honorable Court's long-standing doctrine that "the res judicata consequences of a final unappealed judgment on the merits are not altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." *Id.*

If the breadth of the res judicata principle reaffirmed by this Court in *Federated Department Stores, Inc.* has, indeed, been narrowed in *Chick Kam Choo*, nevertheless this ruling was made subsequent to the federal district court's decision in the Federal Condemnation Proceeding, No. 74-54. *See Baldwin v. Traveling Men's Assn.*, 283 U.S. 552, 525 (1931); *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 (1940); *Wilson's Executor v. Deen*, 121 U.S. 525, 534 (1887).

Unless the *Chick Kam Choo* decision by this Court has, in fact, *completely* overruled the *entire* breadth of the holding in *Federated Department Stores, Inc.*, then Respondents should be rightfully barred from relitigating "issues that were *or could have been* [emphasis added] raised [in the 1974 Federal Condemnation Proceeding, CA 74-54]." *See, e.g., Federated Department Stores, Inc. v. Moitie*, 452 U.S. 398 (1981); *Baldwin v. Traveling Men's Assn.*, 283 U.S. 522 (1931); *Angel v. Bullington*, 330 U.S. 183, 187 (1947).

The important federal question necessarily decided in the Sixth Circuit Opinion below that this Court in *Chick Kam Choo* overruled and completely "swept away" the *entire* holding in *Federated Department Stores, Inc.* was *wrongly* decided. Petitioners respectfully request that this Honorable Court reaffirm the viability of this fundamental doctrine, and further elaborate as to its parameters.

The Opinion of the Sixth Circuit below creates a conflict among the Circuits with regard to whether the issue of ownership to a unitary tract of land must *necessarily* have been decided in determining the award of damages in a partial-taking case.

The Sixth Circuit ignored the existence of certain legally mandated procedures followed by the Land Commissioners in the Federal Condemnation Proceeding, i.e. in the partial-taking case No. 74-54. The appropriate measure of damages is the difference between the value of the parent tract *before* the taking and its value *after* taking. *United States v. Virginia Electric Co.*, 365 U.S. 624, 632, 81 S.Ct. 784, 790, 5 L.Ed.2d 838 (1961); *United States v. 8.41 Acres of Land, More or Less*, 680 F.2d 388, 392 (5th Cir. 1982).

Damages, however, for a partial-taking may be awarded *only* where there exists a unity of ownership between the parent tract and the smaller parcels. *See United States v. 50.50 Acres of Land*, 931 F.2d 1349, 1359 (9th Cir. 1991); *United States v. 429.50 Acres of Land*, 612 F.2d 459, 464 (9th Cir. 1980).

The Sixth Circuit "[agreed] with the District Court that the 'in aid of jurisdiction' exception does not apply in this case." *Bradley v. Robinson*, 91-5562. In contrast to the Opinion of the Sixth Circuit below that affirmed the District Court's Opinion was predicated on the false premise that no unity of title must exist in a partial-taking case.

However, the same District Court in the 74-54 Federal Condemnation Proceeding in 1974 followed the prevailing rule enunciated by the Honorable Court, as well as other Circuits. In sum, the District Court in the 1974 Federal Condemnation Proceeding determined in its Judgment the proper award of payment to Petitioners for the diminution in value of the whole 57.05 acres from the taking of Tracts 3204E and 3322E, and *necessarily* that the *Petitioners were the owners of all of the parent tract based on the same source of title.*

The Opinion below of the Sixth Circuit conflicts with decisions of this Court and creates conflict between the Circuits with regard to whether the equitable remedy of injunction is the *only* adequate remedy to restrain vexations, harassing relitigation, and to effectuate and protect previously acquired in rem jurisdiction. As Justice Reed said in his *Toucey* dissent, the alternative to allowing such injunctions "is that a federal judgment entered perhaps after years of expense in money and energy and after the production of thousands of pages of evidence comes to nothing that is final. It is to be *only* [emphasis added] the basis for a plea of res judicata...." *Samuel C. Ennis & Co., Inc. v. Woodmar Realty Co.*, 542 F.2d 45 (7th Cir. 1976) (quoting *Toucey* dissent at 314 U.S. 144 (1941)).

The law is clear that federal courts do have jurisdiction to enjoin state court proceedings when such a state court proceeding could nullify a prior federal judgment. *Local Loan Co. v. Hunt*, 292 U.S. 234, 239, 54 S.Ct. 695, 697, 78 L.Ed. 1230 (1934) (holding that "a federal court of equity has jurisdiction ancillary to an original case for proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein"); *Dugas v. American Surety Co.*, 300 U.S. 414, 428, 57 S.Ct. 515, 521, 81 L.Ed. 720 (1937) (no requirement for independent jurisdiction because the court's jurisdiction to issue an injunction under §2283 is ancillary to its jurisdiction in the underlying case). *See also Samuel C. Ennis & Company v. Woodmar Realty Co.*, 542 F.2d 45, 48 (7th Cir. 1976); *see also generally* 17 C. Wright & A. Miller, *Federal Practice and Procedure: Jurisdiction 2d* §4226 at 547-48 (1988) (stating that "[n]o independent basis of jurisdiction is required for a federal court to entertain an application to enjoin relitigation in state court. This is thought to be within the ancillary jurisdiction of the federal court.")

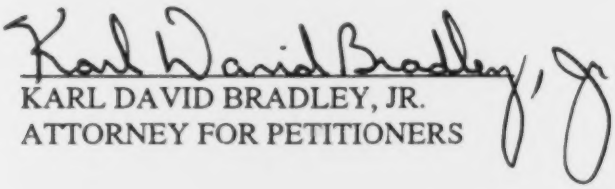
The inequity of forcing Petitioners to litigate a complex federal res judicata matter on an accelerated Economical Litigation Docket in a legally incompetent forum in order to obtain a wholly inadequate remedy which will *not* protect their cherished ancestral property from additional harassing lawsuits by Respondents undermines the equitable aim of our system of jurisprudence.

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should issue to review the Judgment and Opinion of the Sixth Circuit Court of Appeals in this matter.

Dated June 24, 1992.

Respectfully submitted,



KARL DAVID BRADLEY, JR.
ATTORNEY FOR PETITIONERS

KARL BRADLEY and JOHNNY M. BRADLEY, Plaintiffs-Appellants, v. ASA R. LITTLE, FARRIS H. GILLESPIE and JUANITA ROBINSON, Defendants-Appellees, and J.M. RICHARDSON, Defendant

APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 91-5562. Filed March 27, 1992. Leonard Green, Clerk.

Before: RYAN and SUHRHEINRICH, Circuit Judges; and CHURCHILL, Senior District Judge *

RYAN, Circuit Judge. Plaintiffs in this federal action seek to enjoin a state court proceeding instituted by defendants to quiet title to a 5.94-acre area of land. The issue on appeal is whether the district court properly dismissed plaintiffs' suit on a motion for summary judgment for lack of jurisdiction under the Anti-Injunction Act, 28 U.S.C. §2283. We conclude that the district court correctly interpreted the Anti-Injunction Act and properly dismissed this action for lack of jurisdiction.

I.

In 1944, the government deemed approximately 57 acres to James Mynhier, the grandfather of plaintiff Johnny Mynhier Bradley. In 1955, E.H. and Emma Robinson conveyed the land directly north of the Mynhiers to their son and daughter-in-law, defendants Herman and Juanita Robinson. The property descriptions in the 1955 Robinson deed matched the calls and boundary descriptions of the 1944 Mynhier deed.

In 1969, the Robinsons purported to convey a one-half undivided interest in their property to co-defendants Farris H. and Ruby Gillespie. This deed was prepared by another defendant, Asa Little, a lawyer in Menifee County who had been hired by the United States Army Corp of Engineers in the years prior to check and certify titles for the acquisition of property for the construction of the Cave Run Lake.

* The Honorable James P. Churchill, Senior District Judge of the United States District Court for the Eastern District of Michigan, sitting by designation.

APPENDIX A

The description of the southern boundary in this 1969 deed did not match the 1955 deed. Instead, it purported to convey property up to 550 feet to the south of the earlier boundary line. Apparently, this confusion stemmed from the use of a map which Little had previously used in connection with his duties under the contract with the Army Corp of Engineers.

In 1973, Mr. and Mrs. John L. Mynhier also hired Asa Little to convey their property to their daughter and son, plaintiff Johnny Mynhier Bradley and Walter Clay Mynhier, respectively. Little apparently again used the Army map for reference rather than the earlier 1944 Mynhier deed. According to Little, he furnished Mr. Mynhier with the Army map and conveyed property as it was identified by Mr. Mynhier. According to the 1973 Mynhier/Bradley deed, the northern boundary line of the Mynhier/Bradley property matched the description of the southern boundary line of the 1969 Robinson/Gillespie deed, setting the boundary between the properties at approximately 550 feet to the south of the boundary line as described in the 1944 Mynhier and 1955 Robinson deeds. Part of the land in dispute in the current state court proceeding is included in the 1969 Robinson/Gillespie deed and excluded from the 1973 Mynhier/ Bradley deed.

In 1974, the government commenced a federal condemnation action to acquire a fee title and perpetual easements over three tracts of land: tracts 3204, 3204E, and 3322E. The government named all who they believed could potentially claim ownership to the condemned tracts of land. As to tracts 3204 and 3204E, only the Mynhiers and Bradleys were informed. The government referred to the ownership of these tracts as stemming from the 1973 Mynhier/Bradley deed. As to tract 3322E, the government's complaint issued notice to the Bradleys, Mynhiers, Gillespies, Robinsons, and others not parties to the current litigation, expressly noting the intent of its description to include "part of the disputed boundary" of several deeds, including the 1973 Mynhier/Bradley and 1969 Robinson/Gillespie deeds: Tract 3322E contained approximately 0.76 acres.

The Mynhiers and Bradleys were the only parties to appear at the condemnation proceedings. On March 31, 1977, the Mynhiers and Bradleys moved for judgment "to declare [them] as full owners of that real estate described herein known as 'Tract No. 3322E.'" The panel of land commissioners, in their report to the court dated April 8, 1977, mentioned the motion by the Mynhiers and Bradleys for judgment,

but referred determination of the question to the court. In their findings of fact, the land commissioners stated: "The owners of said real estate at the time of taking were Walter Clay Mynhier and Margaret Mynhier, his wife, and Johnny Maxine Bradley and Karl Bradley, her husband. Herman Robinson and Juanita Robinson, his wife, and Farris H. Gillespie and Ruby Gillespie, his wife, and the unknown heirs of Julia Haig may have an interest in the property."

The condemnation court's judgment dated May 16, 1977, adopts the report of the land commissioners in all respects, but does not address the motion of the Mynhiers and Bradleys to be named full owners of tract 3322E. By an order of the court also dated May 16, 1977, however, the Robinsons and Gillespies, and all other interested parties, were given 20 days to respond to the Mynhiers/Bradleys' motion for judgment. No response was filed. On June 30, 1977, funds amounting to $22,164.00 were disbursed to the Mynhiers and Bradleys.

In July 1990, the Robinsons and Gillespies initiated a Kentucky state court quiet title action, alleging ownership of part of the land subject to disputed boundaries based on deed and/or adverse possession claims. In November 1990, the Bradleys brought this federal action to enjoin the state court proceedings. The Bradleys also sought compensatory and punitive damages for the alleged professional malpractice of Little and "bad faith" initiation of legal proceedings brought to harass them and slander their title. The district court granted the defendants' motion for summary judgment, dismissing the Bradleys' federal action for lack of jurisdiction under the Anti-Injunction Act.

II.

The Anti-Injunction Act provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. §2283. The purpose of the Act is to avoid "the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court." *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630-31 (1977). It is an absolute prohibition against any injunction of any state-court proceedings unless the injunction falls within one of the three specifically defined exceptions. *Id.* at 630. The Supreme Court has recognized that the Act is to be construed strictly: "Any doubts as to the propriety of a federal

injunction should be resolved in favor of permitting state courts to proceed in an orderly fashion to finally determine the controversy." *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs.*, 398 U.S. 281, 297 (1970).

Plaintiffs seek injunctive relief under the Act's second and third exceptions, arguing that a federal court injunction against the state court proceedings is necessary "in aid of [the federal court's] jurisdiction" and "to protect or effectuate [the federal court's] judgments." The jurisdiction of the federal courts and the availability of injunctive relief under the Anti-Injunction Act in these circumstances are questions of law. Therefore, our standard of review is de novo. *McBee v. Abramajtys*, 929 F.2d 264, 266 (6th Cir. 1991).

The district court summarily dismissed plaintiffs' arguments under the "in aid of jurisdiction" exception as "baseless," though no analysis was provided. On appeal, plaintiffs pursue this theory more vigorously, arguing that the "in aid of jurisdiction" exception applies to in rem actions such as the 1974-1977 federal condemnation proceedings; that the federal court had jurisdiction over the now-disputed lands subject to the state court action and considered the issue of title to that land; and that an injunction by the federal court is required in order to aid the court "in its continued jurisdiction over the res."

This argument is without merit. The "in aid of jurisdiction" exception expresses the rule that if an action is in rem, the court first obtaining jurisdiction over the res may enjoin suits in other courts involving the same res. *See Vendo*, 433 U.S. at 642 (citing *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 134-135 (1941)). Plaintiffs' assertion that the federal court maintains "continued jurisdiction over the res," however, is offered without citation to authority and is simply mistaken. There are no concurrent federal and state proceedings involving the same res, nor any continuing jurisdiction or supervision by the federal court of its prior judgment. Plaintiffs do not explain how the state court's resolution of the title dispute will disturb the federal court disposition in the prior condemnation proceeding, *cf. United States v. 22,680 Acres of Land*, 438 F.2d 75, 77 (5th Cir. 1971), nor do they show the existence of an "irreconcilable conflict" between the federal and state courts. *See Signal Properties, Inc. v. Farha*, 482 F.2d 1136, 1137 (5th Cir. 1973). We agree with the district court that the "in aid of jurisdiction" exception does not apply in this case.

The other exception to the Anti-Injunction Act offered by Plaintiffs is of greater merit, but also ultimately fails. The so-called "relitigation" exception allows for federal court jurisdiction where "necessary ... to protect or effectuate its judgments" and permits, but does not require, injunctive actions against state judicial proceedings to avoid the relitigation of matters already presented to and decided by a federal court. In *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988), the Supreme Court set forth some standards for application of the relitigation exception. "[A]n essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation actually have been decided by the federal court." *Id.* at 148. The federal courts' review of the prior litigation must be "strict and narrow" and confined to "assess[ing] the precise state of the record and what the earlier federal order *actually* said; it [does] not permit the [federal] court to render a post hoc judgment as to what the order was *intended* to say." *Id.* (emphasis in original).

Plaintiffs' relitigation argument is founded on the assertion that the issue of title to the 5.94 acres of land currently disputed in the state court action was necessarily decided by the federal court in condemnation. Plaintiffs argue that the ownership of the disputed land was necessarily at issue in the condemnation proceedings because it may be traced to the source of title (the 1944 Mynhier deed) as tract 3322E. Further, they contend that because they were compensated for the taking of tract 3322E, the condemnation court decided the disputed boundary issue in their favor.

The defendants argue that the question of ownership of the disputed land was never at issue in the condemnation proceedings, as the 5.94 acres were not included in the description of any of the properties taken by the United States in the condemnation proceedings. Moreover, defendants argue, the issue of ownership to tract 3322E, while raised before the land commissioners, was never specifically or necessarily addressed or decided by the court in condemnation.

We are satisfied, upon review of the record, that the issues presented in the current state court action were never decided by the federal court in the condemnation proceedings. The task is to determine what the earlier federal order actually said. *Chick Kam Choo*, 486 U.S. at 148. We are not persuaded that title to the disputed land was expressly or necessarily decided in the condemnation action.

Moreover, the adverse possession claims could not even have been considered in 1977. Thus, plaintiffs fail to make the "strong and unequivocal showing of relitigation of the same issue" necessary "to overcome the federal courts' proper disinclination to intermeddle in state court proceedings." *De Cosme v. Sea Containers, Ltd.*, 874 F.2d 66, 68 (1st Cir. 1989) (quoting *Southern California Petroleum Corp. v. Harper*, 273 F.2d 715, 719 (5th Cir. 1960)). Plaintiffs' res judicata claims are not necessarily without merit, yet "the proper forum for a complete investigation of the res judicata effects of the district court's judgment is the state court," which remains fully competent and able to resolve the issue. *Staffer v. Bouchard Transp. Co.*, 878 F.2d 638, 643 (2d Cir. 1989).

III.

The district court did not abuse its discretion in refusing to grant an injunction against the state court proceeding, nor did it err in dismissing the complaint in this case for lack of jurisdiction under the Anti-Injunction Act.

For the foregoing reasons, we **AFFIRM.**

JOHNNY MYNHIER BRADLEY and KARL BRADLEY, her husband, Plaintiffs, v. JUANITA ROBINSON, FARRIS H. GILLESPIE, ASA R. LITTLE, JR., and J.M. RICHARDSON in his capacity as JUDGE, MENIFEE CIRCUIT COURT, Defendants

ORDER FROM UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

No. 90-516. Filed February 5, 1991. Leslie G. Whitmer, Clerk.

On motion of David N. Shattuck to withdraw as attorney for Plaintiffs, and the Court being sufficiently advised, it is hereby ORDERED that said motion should be and is hereby SUSTAINED.

Entered this the 5th day of February, 1991.

_____

JUDGE,
UNITED STATES DISTRICT COURT

TENDERED BY:

_____

DAVID N. SHATTUCK

APPENDIX B

JOHNNY MYNHIER BRADLEY, et al., Plaintiffs,
v. JUANITA ROBINSON, et al., Defendants

ORDER FROM UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY

No. 90-516. Filed February 5, 1991. Leslie G. Whitmer, Clerk.

This matter is before the court upon the motion of plaintiffs to voluntarily dismiss defendant J.M. Richardson, in his capacity as Judge of Menifee Circuit Court. Therefore, it is hereby ORDERED that the motion is GRANTED, and defendant J.M. Richardson is DISMISSED as a defendant to this action.

Entered this the 5th day of February, 1991.

KARL S. FORESTER, JUDGE

APPENDIX C

JOHNNY MYNHIER BRADLEY, et al., Plaintiffs
v. JUANITA ROBINSON, et al., Defendants

OPINION AND ORDER FROM UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

No. 90-516. Filed April 11, 1991. Leslie G. Whitmer, Clerk.

This matter is before the Court upon the plaintiffs' motion for partial summary judgment and to add the United States as an involuntary plaintiff. The defendants move to dismiss or for summary judgment for lack of jurisdiction.

In their complaint, the plaintiffs seek an injunction barring the defendants from litigating a claim in Menifee Circuit Court concerning a tract of land in Menifee County, Kentucky. They also assert several state law claims. They contend that they became the owners of the disputed tract through a condemnation action that the United States filed in this Court in 1974. They state that this Court has federal question jurisdiction to enter an injunction.

In their motion for partial summary judgment, the plaintiffs contend that they are entitled to an injunction as a matter of law to enjoin the defendants from challenging their ownership of the tract of land. Although discerning the plaintiffs' arguments in their convoluted and rambling memoranda is rather difficult, they apparently contend that the federal condemnation action bars the current Menifee Circuit Court litigation based on the doctrine of res judicata.

The defendants respond by contending that they are entitled to a dismissal or to summary judgment because the Anti-Injunction Act forbids this Court from enjoining proceedings in state courts. The Act provides: "A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. §2283. The plaintiffs attempt to invoke the relitigation exception, the Act's third exception, in support of their injunction claim.

APPENDIX D

In *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988), the United States Supreme Court explained: "The relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court. It is founded in the well-recognized concepts of res judicata and collateral estoppel." As the defendants point out, however, the Supreme Court held that "an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court." *Id.* at 148.

The defendants attached exhibits to their motion that demonstrate that the parties in the prior federal condemnation action did not actually litigate the title to the disputed tract of land. In their reply, the plaintiffs do not contend that this Court actually decided the title ownership issue in the condemnation action. Rather, they argue that this Court is not bound to follow the *Chick Kam Choo* case because the Supreme Court granted certiorari in that case to resolve a conflict between the Fifth and Ninth Circuits without concerning any cases from the Sixth Circuit. The plaintiffs' argument that this Court can ignore Supreme Court precedent is, of course, completely without merit. They also make baseless arguments that their injunction claim falls under other exceptions to the Anti-Injunction Act.

This Court holds that the Anti-Injunction Act forbids enjoining the Menifee Circuit Court litigation and that no exception to the Act applies. This Court also has no jurisdictional basis to consider the plaintiffs' remaining state law claims. The plaintiffs must assert their res judicata arguments and state law claims in state court. Summary judgment is appropriate if the moving party establishes that there is no genuine issue of material fact for trial and that he is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The defendants, therefore, are entitled to summary judgment.

The Court being well and sufficiently advised, it is hereby ORDERED:

(1) that the plaintiffs' motion for partial summary judgment is DENIED;

(2) that the plaintiffs' motion to add the United States as an involuntary plaintiff is DENIED; and

(3) that the defendants' motion for summary judgment is GRANTED, and summary judgment will be entered contemporaneously with this opinion and order in favor of the defendants.

On this 11th day of April, 1991.

KARL S. FORESTER, JUDGE

JOHNNY MYNHIER BRADLEY, et al., Plaintiffs
v. JUANITA ROBINSON, et al., Defendants

SUMMARY JUDGMENT FROM UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

No. 90-516. Filed April 11, 1991. Leslie G. Whitmer, Clerk.

In accordance with the memorandum opinion entered contemporaneously with this summary judgment, it is hereby ORDERED:

(1) that the defendants' motion for summary judgment is GRANTED, and summary judgment is entered in favor of the defendants;

(2) that this matter is DISMISSED WITH PREJUDICE;

(3) that this judgment is final and appealable, and no just cause for delay exists; and

(4) that this matter is STRICKEN from the active docket.

On this 11th day of April, 1991.

KARL S. FORESTER, JUDGE

APPENDIX E

JOHNNY MYNHIER BRADLEY and KARL BRADLEY, her husband, Plaintiffs, v. JUANITA ROBINSON, FARRIS H. GILLESPIE and ASA R. LITTLE, JR., Defendants

NOTICE OF APPEAL FROM UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

No. 90-516. Filed May 6, 1991. Leslie G. Whitmer, Clerk.

Notice is hereby given that Johnny Mynhier Bradley and Karl Bradley, Plaintiffs above named, hereby appeal to the United States Court of Appeals for the Sixth Circuit from the Opinion and Order entered in this Court on April 11, 1991.

On this 6th day of May, 1991.

McBRAYER, McGINNIS, LESLIE & KIRKLAND
163 West Short Street, Suite 400
Lexington, KY 40507
(606) 231-8780

GLENN A. ACREE

APPENDIX F

JOHNNY MYNHIER BRADLEY and KARL BRADLEY, her husband, Plaintiffs-Appellants, v. JUANITA ROBINSON, FARRIS H. GILLESPIE and ASA R. LITTLE, JR., Defendants-Appellees, and J.M. RICHARDSON in his capacity as Judge, Menifee Circuit Court, Defendant

ORDER FROM UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 91-5562. Filed July 24, 1991. Leonard Green, Clerk.

Before: BOGGS, Circuit Judge; LIVELY, Senior Circuit Judge; and CLELAND, District Judge *

The plaintiffs have filed a notice of appeal from the district court's opinion and order granting summary judgment for the defendants in this action to enjoin litigation in state court concerning a tract of land. The district court entered an opinion and order and a separate order of summary judgment on the same day. The defendants move to dismiss the appeal on grounds that the notice of appeal specifies that the opinion and order, not the summary judgment, is being appealed. They assert that the plaintiffs should have appealed from the separate order of summary judgment rather than the order and opinion granting summary judgment. The plaintiffs have responded in opposition to this motion.

The defendants have not shown grounds for dismissal of this appeal. The failure to mention or misidentification of a ruling being appealed does not destroy appellate jurisdiction as long as the intent to appeal is apparent and the appellee suffers no prejudice. *United States v. William*, 804 F.2d 961, 963 (6th Cir. 1986); *see also McLaurin v. Fischer*, 768 F.2d 98, 101-102 (6th Cir. 1985).

It is clear that the plaintiffs here wish to appeal the district court's decision to grant summary judgment in favor of the defendants.

* The Honorable Robert H. Cleland, U.S. District Judge for the Eastern District of Michigan, sitting by designation.

The defendants have not been misled or prejudiced by the notice of appeal. *See Sanabria v. United States*, 437 U.S. 54, 67 n. 21 (1978).

It is therefore ORDERED that the defendants' motion to dismiss this appeal is denied.

ENTERED BY ORDER OF THE COURT

_____

CLERK

JOHNNY MYNHIER BRADLEY and KARL BRADLEY,
her husband, Plaintiffs-Appellants, v. JUANITA ROBINSON,
FARRIS H. GILLESPIE and ASA R. LITTLE, JR.,
Defendants-Appellees, and J.M. RICHARDSON
in his capacity as Judge, Menifee Circuit Court, Defendant

ORDER FROM UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-5562. Filed August 19, 1991. Leonard Green, Clerk.

Upon consideration of the motion of Glenn E. Acree to withdraw as counsel for the appellants, it is ORDERED that the motion be and it hereby is GRANTED.

Upon further consideration of the appellants' motion to hold the above cause in abeyance pending retention of substitute counsel, it is ORDERED that the motion be and it hereby is DENIED. The appellants are to advise this court of the name of new counsel or file their brief on or before October 7, 1991. The appellees' brief is now due November 4, 1991, the reply brief November 18, 1991, and the joint appendix November 25, 1991.

ENTERED PURSUANT TO RULE 8(b),
RULES OF THE SIXTH CIRCUIT

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CLERK

APPENDIX H

JOHNNY MYNHIER BRADLEY and KARL BRADLEY,
her husband, Plaintiffs-Appellants, v. JUANITA ROBINSON,
FARRIS H. GILLESPIE and ASA R. LITTLE, JR.,
Defendants-Appellees, and J.M. RICHARDSON
in his capacity as Judge, Menifee Circuit Court, Defendant

ORDER FROM UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-5562. Filed May 8, 1992. Leonard Green, Clerk.

Before: RYAN and SUHRHEINRICH, Circuit Judges;
and CHURCHILL, District Judge *

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

CLERK

* The Honorable James P. Churchill, District Judge for the Eastern District of Michigan, sitting by designation.

APPENDIX I

JOHNNY MYNHIER BRADLEY and KARL BRADLEY,
her husband, Plaintiffs-Appellants, v. JUANITA ROBINSON,
FARRIS H. GILLESPIE and ASA R. LITTLE, JR.,
Defendants-Appellees, and J.M. RICHARDSON
in his capacity as Judge, Menifee Circuit Court, Defendant

ORDER FROM UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-5562. Filed May 28, 1992. Leonard Green, Clerk.

Before: RYAN and SUHRHEINRICH, Circuit Judges;
and CHURCHILL, District Judge *

Upon consideration of the motion to stay the mandate submitted by the appellants,

It is ORDERED that the motion be and it hereby is GRANTED.

ENTERED BY ORDER OF THE COURT

_____

CLERK

* The Honorable James P. Churchill, District Judge for the Eastern District of Michigan, sitting by designation.

APPENDIX J

28 U.S.C. §1254
COURTS OF APPEALS; CERTIORARI;
APPEAL; CERTIFIED QUESTIONS

Cases is the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

(2) * * * * * * * * * * *

APPENDIX K

28 U.S.C. §1331
FEDERAL QUESTION

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

APPENDIX L

28 U.S.C. §2101
SUPREME COURT; TIME FOR APPEAL OR CERTIORARI; DOCKETING; STAY

(a) * * * * * * * * * *

(b) * * * * * * * * * *

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) * * * * * * * * * *

(e) * * * * * * * * * *

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

APPENDIX M

28 U.S.C. §2283
STAY OF STATE COURT PROCEEDINGS

A court of the United States may not grant an injunction to stay proceedings in a State court except ... where necessary in aid of its juris-diction, or to protect or effectuate its judgments.

APPENDIX N

40 U.S.C. §258a
LANDS, EASEMENTS, OR RIGHTS OF WAY FOR PUBLIC USE; TAKING OF POSSESSION AND TITLE IN ADVANCE OF FINAL JUDGMENT; AUTHORITY; PROCEDURE

In any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto:

(1) A statement of the authority under which and the public use for which said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for said public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include,

as part of the just compensation awarded, interest in accordance with section 6 of this Act on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

F.R.C.P. RULE 19
JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) *Persons to be Joined if Feasible.* A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence, complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

F.R.C.P. RULE 71A
CONDEMNATION OF PROPERTY

(a) *Applicability of Other Rules.* The Rules of Civil Procedure for the United States District Courts govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule.

(b) * * * * * * * * * * *

(c) * * * * * * * * * * *

(d) * * * * * * * * * * *

(e) *Appearance of Answer.* If a defendant has no objection or defense to the taking of the defendant's property, the defendant may serve a notice of appearance designating the property in which the defendant claims to be interested. Thereafter, the defendant shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of the property, the defendant shall serve an answer within 20 days after the service of notice upon the defendant. The answer shall identify the property in which the defendant claims to have an interest, state the nature and extent of the interest claimed, and state all the defendant's objections and defenses to the taking of the property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not the defendant has previously appeared or answered, the defendant may present evidence as to the amount of the compensation to be paid for the property, and the defendant may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.